IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2346 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PANDYA MANEKLAL UMIASHANKER

Versus

PANDYA MULSHANKER AMTHARAM

Appearance:

MR SN SHELAT for Petitioner

MR VASANT S SHAH for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: /2000

CAV JUDGEMENT

Learned advocate Mr. Mitul Shelat is appearing for Mr. S.N.Shelat for the petitioner. Learned advocate Mr. Vasant S. Shah is appearing for the respondents no.1 to 3.

This petition was admitted by this court by issuing rule thereon on 31.3.1990 and by way of interim relief, it was directed that the respondents shall not alienate the interest in the lands in question in any manner whatsoever nor shall part with the possession of this land.

Today, when the matter has been taken up, learned advocate Mr. V.S. Shah has not remained present even in the third round. This Court has, therefore, proceeded in absence of Mr. Shah and has examined the merits of the matter on the basis of the papers on record. It is also required to be noted that in this matter, the respondents have not filed any affidavit in reply.

The facts of the present petition, in brief, are as under:

The petitioner is the tenant of the lands of survey No. 1284 situated at village Nadasa, Taluka : Mehsana belonging to the respondents. In a proceedings initiated under the provisions of section 32-O of the Bombay Tenancy and Agricultural Lands Act,1948, by the petitioner, the Mamlatdar and A.L.T. Mehsana by order dated 24thJune, 1985 declared the petitioner as deemed tenant in respect of four acres five gunthas of the land in question and the purchase price was fixed atRs.1540/against which the respondents filed appeal no. 290 of 1985 before the Deputy Collector, Mehsana which came to be dismissed by order dated 31st July,1987. Thereupon, the respondents preferred revision application No. TEN.BA.618/87 before the Gujarat Revenue Tribunal. The tribunal, under order dated 20th October, 1989, set aside the orders of both the lower authorities and held that the petitioner was not a tenant. Said order is at annexure "C" to the present petition. The petitioner has challenged the said judgment and order of the tribunal dated 20th October, 1989 in this petition under Article 227 of the Constitution of India.

Learned advocate Mr.Shelat appearing for the petitioner has submitted that the tribunal has erred in law and facts in allowing the revision and also in setting aside the orders of the lower revenue authorities. He has further submitted that the tribunal was not justified in disturbing the concurrent findings of facts given by the Mamlatdar and ALT which were confirmed by the Deputy Collector. The tribunal has also over looked that the name of the petitioner was not recorded in the revenue record after 1962 only because it

was a case of concealed tenancy. The Tribunal has also over looked the fact that from 1955-56 upto 1962,name of the petitioner did appeared in the revenue record. According to him, the view of the tribunal is apparently erroneous and therefore, this court should interfere with the same and should restore the order of the Mamlatdar and ALT as confirmed by the Deputy Collector.

In the inquiry under section 32-O, the Mamlatdar has examined the petitioner as well as the witness Prandas Mohanbhai, Dayabhai Mafatlal and Hargovingbhai on behalf of the petitioner. As against that, the Mamlatdar has also examined the owner of the land Shri Mulshankarbhai, Shri Baldevbhai Khodabhai, Maganji and Rupaben, widow of Khodaji Kalaji. After considering the oral evidence as well as the documentary evidence on record, the Mamlatdar has come to the conclusion by order dated 24th June, 1985 that the petitioner was deemed tenant of the land in question and the petitioner is entitled to purchase the land with effect from 1964-65 and the price of the land was fixed at Rs.1,540/- which was required to be deposited by the petitioner within one year and the said sale of the land was subject to section 43 sub clause (1). Said order of the Mamlatdar was challenged by the Respondents in appeal before the Deputy Collector. The Deputy Collector has also considered the evidence which was led before the Mamlatdar and has also considered the documentary evidence and has come to the conclusion that the order passed by the Mamlatdar and ALT dated 24.6.1985 is quite legal and valid and the appeal has, therefore, been dismissed by the Deputy Collector. However, it is observed by the Deputy Collector that the possession of the land in question has been taken over by the third party from the petitioner and, therefore, the petitioner is entitled to initiate the proceedings under section 84 by submitting separate application to the authority for recovering the possession of the land in question. Learned advocate Mr.Shelat has submitted that the petitioner has approached the authority by making necessary application under sec.84 being case no. 4 of 1987 before the Deputy Collector, Mehsana wherein it has been pointed out that because of the proceedings initiated by the respondents before the Gujarat Revenue Tribunal being revision application no. 618 of 1987, the proceedings under sec.84 has been stayed by the Deputy Collector, Mehsana in view of the stay granted by the tribunal in revision application not to enforce the order dated 31st July, 1987.

The tribunal has considered that the claim of the petitioner was of deemed tenant and in such a case,

burden of proof to prove such deemed tenancy lies on the person alleging himself to be the tenant. The name of the tenant is not found in the revenue record of rights after 1960 even though his name was earlier was recorded as such for which section 32G proceedings were initiated. The tribunal has observed that the tenant was aware of the fact that in order to be a tenant, his name should be in the record but for a long period of 20 years, he had not cared to take any action in that regard and that he has also produced no evidence regarding land revenue receipt or the details of the crops of various years for which he has given share to the land lords. The tribunal was of the view that if the tenant cultivates the land for a period of 20 years, he must possess some evidence to show that he is cultivating the land personally but such concrete evidence is completely lacking in this case. The tribunal has considered that there were words against words namely oral evidence from both the sides and the evidence from both the sides is equally convincing. The tribunal was of the view that in absence of any documentary evidence, it is not possible to believe the oral statements of the person who may be interested with the parties. The tribunal has also considered that it is material that on the date of the application, the tenant should be in possession of the lands. It is found that the land lord has sold away the land on 5.7.84 by banakhat and the application was submitted on 20.7.1984 i.e. after the execution of the banakhat and the banakhat states that the possession of the land has been handed over to the third party. Inspsite of that, no proceedings under section 70(nb) of the Act has been taken over by the tenant for staying the process of taking over the possession from him. The tribunal was, thus, of the view that the tenant has not been able to prove his possession from the date of the application i.e.20.7.84. It was also observed by the tribunal that the land lord is distant relative of the tenant and there was clear admission on the part of the tenant that both the land lord and tenant are governed by specific relationship. The tribunal has also appreciated the decision reported in A.I.R. 1983 SC 684 and in view of such reasoning, the tribunal has allowed the revision application while setting aside the orders passed by the authorities below.

I have considered the submissions made by Mr.Shelat. I have also examined the orders passed by the Mamlatdar and ALT which were confirmed by the Deputy Collector in an appeal preferred by the respondents. I have also considered the judgment of the Gujarat Revenue Tribunal in revision preferred by the respondents against

the order passed by the Deputy Collector.Having perused the orders passed by the tribunal in comparison to the orders of the lower authorities, I am of the view that the tribunal has not appreciated the fact that the name of the petitioner was not recorded in the revenue record after 1962 because it was a case of concealed tenancy. This aspect has not been considered by the tribunal. The tribunal has erred in not appreciating that in case of concealed tenancy, there may not be documentary evidence available with the tenant. The Mamlatdar has considered that the tenant has been cultivating the land after appreciating the evidence on record. Similarly, oral evidence was also produced by the respondents before the record of right team and considering the oral evidence, the record of right team has come to the conclusion by order dated 24th June,1985 that the petitioner was deemed tenant of the land in quesion and was cultivating the land in quesion and, therefore, the petitioner is entitled to purchase the land from 1964-65 and purchase price of Rs.1540.00 was also fixed. The tribunal has mainly relied upon the absence of documentary evidence in proof of tenancy but has not considered that in such a situation, there may not be any documentary evidence available with the tenant and in not doing so, as per my view, the tribunal has erred in law and facts because the land lord and the tenant are nearest relatives. It is also necessary to be noted that the name of the petitioner had appeared in record of right from1955 to 1960 and the mode of cultivation has also been shown. Therefore, the view of the tribunal in disturbing the findings of fact while exercising the revisional powers is erroneous. The tribunal has erred in acting as an appellate authority while exercising the revisional powers and jurisdiction. This is the basic error committed by the tribunal. Therefore, in my view, the tribunal has committed gross error incoming to such a conclusion while setting aside the orders passed by the courts below and, therefore, such order passed by the tribunal is required to be quashed and set aside.

It is settled law laid down by the apex court that in exercising revisional jurisdiction which is similar to Article 227 of the Constitution of India, the revisional authority cannot act as an appellate authority and also cannot reappreciate the oral evidence and also cannot disturb the finding of fact arrived at by the authorities below as per the decision reported in 1998 (1) GLR page 17 and 1998 AIR (SCW)1840. After reading the entire order passed by the tribunal, the tribunal has not given any reason as to how the authority below has committed any gross error and how the order passed by the

authority is without jurisdiction or that the authority has exceeded in exercising the jurisdiction. Merely because another view was possible, it is not open to disturb the finding of fact while exercising the revisional jurisdiction. Therefore, the order of the tribunal is required to be quashed and set aside while restoring the orders passed by the authorities below.

Accordingly, this petition is allowed. Impugned order dated 20th October, 1989 passed by the Gujrat Revenue Tribunal in Tenancy B.A.618 of 1987 is hereby quashed and set aside. Rule is made absolute accordingly with no order as to costs.

11.7.2000 (H.K. Rathod,J.)

Vyas